

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

HANS A. QUAACK, ATTILIO PO
and KARL LEIBINGER, on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 03-CV-11566 (PBS)

STONINGTON PARTNERS, INC., a Delaware
Corporation, STONINGTON CAPITAL
APPRECIATION 1994 FUND L.P., a Delaware
Partnership and STONINGTON HOLDINGS,
L.L.C., a Delaware limited liability company,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 04-CV-10411 (PBS)

GARY B. FILLER and LAWRENCE PERLMAN,
Trustees of the TRA Rights Trust,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 04-CV-10477 (PBS)

JANET BAKER and JAMES BAKER,
JKBAKER LLC and JMBAKER LLC,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING

CORP., SA),

Defendants.

No.: 04-CV-10501 (PBS)

**PLAINTIFFS' RESPONSE TO DEFENDANT DEXIA BANK BELGIUM'S MOTION
FOR LEAVE TO FILE THE LEONE-QUICK DECLARATION UNDER SEAL**

Dexia has moved for leave to file under seal Plaintiffs' counsel's opinion work product that was inadvertently produced to Dexia and that is subject to Plaintiffs' pending motion to compel the return of inadvertently produced documents ("Motion to Compel") (the "Inadvertently Produced Documents").¹ Plaintiffs submit that the Inadvertently Produced Documents should only be submitted to the Court, if at all, for *in camera* inspection, upon this Court's request.²

As previously indicated in Plaintiffs' memorandum in support of their Motion to Compel, the Inadvertently Produced Documents are opinion work product that were inadvertently produced to Dexia in this litigation. Plaintiffs have designated the Inadvertently Produced Documents confidential pursuant to paragraph 3 of the May 31,

¹ The "Inadvertently Produced Documents" refers to the documents attached to the Declaration of Breton Leone-Quick filed on March 22, 2006. According to Dexia's motion for leave, a courtesy copy of this Declaration and exhibits were sent to chambers.

² Plaintiffs previously offered to make these documents available to the Court for *in camera* review. Then, in advance of filing their motion for leave to file under seal, Dexia's counsel contacted Plaintiffs' counsel for their assent to the filing of their motion for leave. Plaintiffs' counsel requested that Dexia forego motion practice, in favor of *in camera* inspection at this Court's requests. Dexia refused and insisted on filing the motion for leave to file under seal.

2005 Stipulation and Proposed Order Governing the Treatment of Confidential Information and are seeking their return through the pending Motion To Compel.

Plaintiffs submit that these confidential documents that are the subject of a pending claim of privilege should not be filed with the Court in any manner. If, upon consideration of the pending Motion To Compel, the Court determines that *in camera* review of the Inadvertently Produced Documents is warranted, the Court has discretion to order the same without destroying Plaintiffs' claim of privilege. Accordingly, Plaintiffs request that the Court (1) deny Dexia's motion for leave to file under seal, and (2) order Dexia not to file the Inadvertently Produced Documents with the Court.

If, however, this Court is inclined to permit the filing of the Inadvertently Produced Documents, Plaintiffs submit that such filing should be under seal.

Plaintiffs have moved for the return of the Inadvertently Produced documents or, in the alternative, for an order limiting Dexia's use of those documents in this litigation. Under either scenario, there is no basis for Plaintiffs' confidential, opinion work product to be publicly-filed with the Court. Even if this Court found that Plaintiffs' inadvertent production constitutes a waiver, it would only be a limited waiver as to only those documents, and that would not justify the world-wide publication of those confidential documents through a public filing. In fact, an order allowing the public filing of the Inadvertently Product Documents could result in the *de facto* denial of Plaintiffs' motion in full.

Accordingly, Plaintiffs submit that it is appropriate for this Court to: (1) deny Dexia's motion for leave to file under seal, and (2) order Dexia not to file the Inadvertently Produced Documents with the Court.

Dated: March 22, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, hereby certify that on this 22nd day of March, 2006, a true and correct copy of the foregoing was served via electronic means, upon counsel listed on the attached service list and also via U.S. Mail on counsel for Dexia Bank Belgium identified on the attached list.

/s/ George R. Coe

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